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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of) MM DOCKET NO. 92-309 ✓
)
LOCAL TELEVISION ASSOCIATES, INC.) File No. BPCT-911106KF
)
CHARLES FITZGERALD) File No. BPCT-920114KF
)
WEBBER/MOORE BROADCASTING COMPANY) File No. BPCT-920114KG
LIMITED PARTNERSHIP)
)
For Construction Permit for a New Commer-)
cial Television Station on Channel 35)
in Jacksonville, North Carolina)

MEMORANDUM OPINION AND ORDER

Issued: April 22, 1993

Released: April 26, 1993

1. Under consideration are "Joint Motion For Approval Of Settlement" filed February 1, 1993 by Local Television Associates, Inc. (LTA), Charles Fitzgerald (Fitzgerald), and Webber/Moore Broadcasting Company, Limited Partnership (Webber/Moore), Supplement To Joint Request For Approval Of Agreement filed February 5, 1993 by LTA, Supplement To Joint Request For Approval Of Agreement filed February 9, 1993 by Webber/Moore, Mass Media Bureau's Comments On Joint Motion For Approval Of Settlement And Related Pleadings filed February 19, 1993, Supplement To Joint Request For Approval Of Settlement Agreement filed April 6, 1993 by Fitzgerald and LTA, Comments Of Webber/Moore Broadcasting Company Limited Partnership filed April 6, 1993, Supplement filed April 8, 1993 by LTA, and Supplement To Joint Motion For Approval Of Settlement Agreement And Dismissal Of Application Of Charles Fitzgerald filed April 12, 1993 filed by Fitzgerald, Supplement To Settlement Affidavit filed April 14, 1993 filed by Fitzgerald; "Petition For Leave To Amend And Request For Authority For Satellite Operation" filed February 1, 1993 by LTA, Supplement To Petition For Leave To Amend filed February 9, 1993 by LTA, Supplement To Petition For Leave To Amend And Request For Authority For Satellite Operation filed April 6, 1993 by LTA, and Mass Media Bureau's Comments On Supplement To Petition For Leave To Amend And Request For Authority For Satellite Operation filed April 15, 1993; and "Technical Amendment" filed February 5, 1993 by Fitzgerald.

2. LTA seeks approval of an agreement providing for the grant of its application and the dismissal of the Fitzgerald and Webber/Moore application in exchange for monetary consideration.¹ LTA also seeks permission to operate

¹ The settlement agreement originally provided for the merger of the Fitzgerald and LTA applications. The supplement to the joint request eliminated the merger and provided instead for the dismissal of the Fitzgerald application in exchange for monetary consideration.

as a satellite of LTA's station WFXI-TV, Morehead City, North Carolina. ²

3. The settlement agreement provides for reimbursement of Webber/Moore's expenses in preparing and prosecuting its application in an amount of up to \$12,000 and to Fitzgerald in an amount up to \$30,000. Also, the agreement provides for an additional payment of \$6,760 to Fitzgerald should he be unsuccessful in obtaining a refund of his hearing fee. Webber/Moore and Fitzgerald have established that the amount to be reimbursed by LTA does not exceed their reasonable and prudent expenses. Additionally, the parties have established that dismissal of Webber/Moore's and Fitzgerald's applications and the grant of LTA's application is in the public interest since it will facilitate prompt initiation of a new service in Jacksonville and the applications were not filed for an improper purpose.

4. The settlement reached by the parties is contingent on the grant of a petition for a leave to amend filed February 1, 1993 seeking acceptance of an amendment permitting the proposed Jacksonville station to operate as a satellite of station WFXI(TV). ³ In its Satellite Policy Statement, 6 FCC Rcd 4212, 4213-4214 (1991), the Commission stated that applicants for television satellite status are entitled to a presumption that the proposed satellite operation is in the public interest if the applicants meet the following three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operation is ready and able to construct or to purchase and operate the satellite as a full-service station. Here, there is no city grade overlap and the proposed station would provide service to an underserved area. ⁴ Thus, the first two hurdles are met.

5. In satisfaction of the third criteria, LTA argues that the operation of the Jacksonville station as a full-service station is not economically feasible. In support of this proposition LTA submits historical market data; the declaration of Millard S. Younts, a media broker familiar with the market; a declaration and study prepared by Susan Harrison of Harrison, Bond & Pecaro, a nationally known firm specializing in broadcast financial analysis; local governmental economic data; the declarations of the principals of the three

² The Bureau supports the requests for relief.

³ The amendment also seeks to amend LTA's technical showing in order to adopt the Fitzgerald technical proposal and to amend the application to delete the divestiture commitment for station WFXI(TV). Good cause has been shown for grant of the requested relief. Also included in the amendment are steps proposed to effectuate the merger between LTA and Fitzgerald which are now moot and will be dismissed.

⁴ Applicants can demonstrate that the area is underserved using one of two tests. The first is a "transmission test" in which the proposed satellite's community of license is considered underserved if two or fewer full-service stations are already licensed to it. Satellite Policy Statement, 6 FCC Rcd at 4215. Only one full time station, WUNM-TV is licensed to Jacksonville, WUNM is a satellite of WUNC-TV, Chapel Hill, North Carolina.

applicants; and supporting Commission precedent. On the basis of LTA's extensive showing, the Presiding Judge concludes that LTA has convincingly demonstrated that operation of the Jacksonville station as a full service station is not economically viable and that the proposed satellite operation is in the public interest.

6. Jacksonville is a community of some 28,780 persons. Jacksonville is located in Onslow County, which is along the Atlantic coast a considerable distance to the south of the center of the Greenville-New Bern-Washington market, where the Jacksonville facility would be located. The market, ADI number 104, is already served by four VHF stations and an independent UHF station, WYDO(TV). WYDO(TV), in order to be economically viable, has entered into an LMA, rebroadcasting WFXI(TV) during a substantial portion of the day. Moreover, the channel at issue in this proceeding is available only because a prior construction permit for the channel was cancelled in March 1991. Also, other construction permit applications in, and just outside the Greenville-New Bern-Washington market have met similar fates. As pointed out by LTA, the Commission has granted authority for unbuilt television stations to operate as satellites in markets considerably larger than the one involved here including the top 25 ADI of Denver, Colorado.

7. Further, as reflected in local government reports submitted by LTA, Onslow County has suffered a severe economic decline in recent years. Among other things, four Onslow County manufacturing plants have closed and the unemployment rate increased by January 1991 to 6.75%. Further, the county's economy is seasonal due to its coastal location and thus a very large portion of the county's employed persons work in jobs that are part-time and/or extremely low-paying. Adding to the difficulty is the cutting of national defense spending, seriously impacting Camp Lejeune, a principal economic contributor. The situation is much the same in adjacent Carteret County. The Harrison study also shows that the market population is substantially poorer and less well educated than national average and that effective buying income and retail sales per household are well below national averages. In this connection, Jacksonville is ranked 321st out of the 333 metropolitan areas ranked in the Places Rated Almanac.

8. Additionally, Harrison's study demonstrates that, even given the most optimistic set of assumptions possible, the station would lose well over a million dollars in its first five years of operation. This figure is only for an operational loss and does not include repayment of the costs of construction or any return on investment for the prospective operator. In this connection, Harrison projects the station to operate at the same cost for five years, when in fact most stations face increased costs over time. Also, she projects that the station on its first day of service will achieve a ratings level in the market not achieved by any independent station in any market smaller than number 77 (Las Vegas, Nevada).⁵ Therefore, it is abundantly clear, given these facts, that the financial prospects for a full-service station are extremely poor.

⁵ The proposed station covers less than half of the area within its market with a Grade B signal.

9. Finally, LTA has submitted the declaration of Millard Younts, a media broker familiar with the market. Younts asserts that he has made a number of inquiries as to the purchase of a stand-alone UHF station in the market and has received no indication of interest; that over the past six months two commercial television stations in the market have been offered by his company as possible for sale and none of these inquiries have ripened into even an expression of interest to buy; and that based on his experience, no prudent person would wish to build or operate a new UHF station in this market. Younts' declaration buttresses the conclusion that no alternative operator is ready and able to construct a full-service UHF station. Accordingly, LTA's request to operate the Jacksonville station as a satellite of WFXI(TV) will be granted subject to the condition that a main studio for the Jacksonville station is maintained for that community.⁶


Accordingly, IT IS ORDERED, That the "Petition For Leave To Amend And Request For Authority For Satellite Operation" filed February 1, 1993 IS GRANTED to the extent of accepting LTA's amended technical showing adopting the Fitzgerald technical proposal, deleting the divestiture commitment for station WFXI(TV), Morehead City, North Carolina, and permitting the Jacksonville station to operate as a satellite of station WFXI(TV); and DISMISSED in all other respects.

IT IS FURTHER ORDERED, That the "Joint Motion For Approval Of Settlement" filed February 1, 1993 IS GRANTED; the settlement agreement, as supplemented, IS APPROVED; the applications of Charles Fitzgerald and Webber/Moore Broadcasting Company, Limited ARE DISMISSED; and the application of Local Television Associates, Inc. IS GRANTED subject to the following condition:

That Local Television Associates, Inc. shall construct and maintain a main studio within six (6) months after the date of commencement of program test authority.

IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph Chachkin
Administrative Law Judge

⁶ In its Supplement filed April 8, 1993, LTA has stated its intent to maintain a main studio for Jacksonville. Page 12, note 5.